

FREDERICK E. HEINZ

IBLA 75-212

Decided May 7, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting application for reinstatement and purchase of trade and manufacturing site claim A-067499.

Affirmed as modified.

1. Alaska: Trade and Manufacturing Sites

An applicant for a trade and manufacturing site who has sold his entire interest in the claim prior to submitting his purchase application is no longer a qualified applicant under the trade and manufacturing site law. Any rights he may have earlier established terminated at the time he conveyed his interest in the claim.

2. Alaska: Trade and Manufacturing Sites

A transferee of an original locator's possessory interest in a trade and manufacturing site cannot qualify for the site under his transferor's notice to avoid the effect of a withdrawal where the transferee had not filed his own notice or purchase application prior to the withdrawal.

3. Alaska: Trade and Manufacturing Sites

Rights to public land can only be gained by compliance with governing public land laws. Trade and manufacturing site occupancy initiated and continued under a defective notice of location filed in the name of one individual, but alleged to

have been filed on behalf of an association of persons, cannot lead to qualification by the association to purchase the site.

APPEARANCES: James Vollintine, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE RITVO

Frederick E. Heinz has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 25, 1974, rejecting his reinstatement and purchase application A-067499 for a trade and manufacturing site. Calvin L. Riley, Jr., has submitted on behalf of himself and Heinz a reinstatement and purchase application for trade and manufacturing site claim A-067499, and both parties request that Riley's application be considered by the Board along with Heinz' appeal. 1/

The facts of this case are as follows. In 1964 Riley and Heinz came to Alaska from Texas and Kansas, respectively. On March 21, 1966, Riley filed a notice of location in his own name for a trade and manufacturing (T&M) site in sec. 27, T. 6 N., R. 1 W., Copper River Meridian, Gakona, Alaska. Riley proposed to use the claim for a "service station, garage & mechanical shop, etc." Riley's notice of location was assigned number A-067499.

On April 2, 1968, Calvin L. Riley, Jr., and Emma Lee Riley for stated valuable consideration quitclaimed to Patricia M. Heinz, "T&M Claim # A067499, \* \* \* and all permanent improvements upon same."

On January 9, 1970, the BLM responded to an inquiry from the Department of Highways, State of Alaska, regarding whether Frederick Heinz had an interest in T&M site A-067499. 2/ The State Office stated that:

The records of this office do not show that Mr. Heinz has acquired any interests in Mr. Riley's trade and manufacturing site. Mr. Heinz, however,

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1/ Counsel for appellant is also representing Mr. Riley on his request for reinstatement and purchase of the T&M site.

2/ The State of Alaska was granted a materials site right-of-way, Anchorage 058844, on April 22, 1963, which was situated within the boundaries of Riley's T&M site claim.

filed a trade and manufacturing site notice of location (Anchorage 067517) for certain lands across the road from [Riley's claim], which lies in the SW 1/4 of protracted section 27, Township 6 North, Range 1 West, Copper River Meridian.

Mr. Heinz' notice of location was filed on March 25, 1966. Upon inquiry to the Alaska State Office, the Board was informed that Mr. Heinz did not submit an application to purchase within five years after filing the claim as required by 43 U.S.C. § 687a-1 (1970) and 43 CFR 2562.3(c). Accordingly, subsequent to the expiration of the five-year period his T&M site case file was closed and removed from the records of the land office.

On June 4, 1970, the State Office received a letter from Heinz in which he stated that he was clarifying the status of T&M site A-067499. Accompanying the letter was a copy of the quitclaim deed to Patricia M. Heinz, and also a letter signed by 14 individuals who attested to the following:

We the undersigned do clarify and witness the fact that Calvin Riley and Fred Heinz started business as pardners [sic] on T.&M.067499 as Gulkana Texaco. Mr. Calvin Riley's interest as a pardner [sic] was purchased by Mrs. Patricia Heinz in April, 1968.

In a letter dated September 15, 1971, the State Office informed Heinz that Riley's T&M site case file had been closed because Riley had not submitted a purchase application within the required five-year period after the filing of his location notice. The letter closed with the State Office advising Heinz that compliance with the trade and manufacturing site law and regulations could not accrue to an original locator's transferee and that any settlement rights vested in Riley during the statutory life of his claim were not assignable.

By letter dated April 23, 1973, Riley submitted an application for reinstatement of his canceled T&M site claim A-067499. Riley maintained that at a time during the five-year period following filing of the notice of location for his claim, he was informed by an employee of the BLM that his application to purchase could not be accepted due to a "land freeze," and when he attempted to apply again after the "land freeze" had been lifted, he was told by the BLM that more than five years had elapsed since the filing of his location notice, and thus, he could no longer apply to purchase the site. Riley requested that, under these circumstances, equitable adjudication be exercised pursuant to 43 CFR 1871.1. Riley indicated that a completed application to purchase would soon follow.

By letter dated May 29, 1973, the State Office informed Riley that there were no provisions in the applicable laws or regulations which permitted the Department to extend the statutory life of a trade and manufacturing site claim, and concluded that the Department could not act on his petition for reinstatement. However, the State Office added that Riley's case could be subject to consideration under principles of equitable adjudication following submission of an acceptable application to purchase, accompanied by the required filing fee, and a statement of reasons supporting his request for equitable relief.

On July 5, 1974, Heinz submitted an application for reinstatement of T&M site claim A-067499. Heinz maintained that Riley's location notice for the T&M site had been filed on behalf of the association of Heinz and Riley, which, pursuant to 43 CFR 2562.1(a), could properly make claim to a trade and manufacturing site. <sup>3/</sup> He then reiterated Riley's earlier allegations concerning the BLM's refusal to accept a purchase application during a "land freeze," and subsequent refusal to accept the application following expiration of the five-year statutory period. Heinz also stated that Riley had quitclaimed his interest in the T&M site to appellant in 1968.

On July 11, 1974, Heinz submitted an application to purchase the subject T&M site. The application was filed on behalf of "an association of citizens." Attached to the application were the following: (1) a sketch of the site; (2) photographs depicting the major improvements on the site; (3) a copy of the letter of attestation signed by 14 individuals indicating that Heinz and Riley had been partners until 1968; (4) an Alaska business license dated January 17, 1967, and other business forms indicating that Heinz and Riley were in business together in 1967; (5) an Alaska business license dated April 15, 1968, indicating that at that point Heinz was the sole proprietor of the business on the subject site; and (6) a notarized affidavit signed by Calvin Riley on July 5, 1974, in Gilchrist, Texas, wherein he states that he filed the location

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<sup>3/</sup> The pertinent part of the regulation reads as follows:

"(a) Notice. Any qualified, person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in A;aska for the purposes of trade, manufacturing, or other productive industry, must file notice of the claim for recordation in the proper office for the district in which the land is situated, within 90 days after such initiation. \* \* \*" (Emphasis added.)

notice for the subject site on behalf of himself and Frederick E. Heinz, and that they both shared the profits from the business equally and were in every respect equal owners of the T&M site.

In its decision of September 25, 1974, the State Office held the following:

In Mr. Heinz's application for reinstatement, he stated that Calvin Riley filed for the trade and manufacturing site claim on behalf of the Association of Heinz and Riley. The notice of location was filed in Mr. Riley's name and neither the claim nor any settlement rights which may have accrued to Mr. Riley are transferable. Rights under the settlement laws stem from acts of appropriation, occupancy and fulfilling the requirements of the various regulations. The right of purchase under section 10 of the act of May 14, 1898 [as amended, 43 U.S.C. § 687a et seq. (1970)], is personal to the locator. (See Dale R. Lindsey, 13 IBLA 107 (September 24, 1973).) A transferee of the claimant's possessory notice in a trade and manufacturing site cannot claim the transferor's notice. (See Kennecott Copper Corporation, 8 IBLA 21 (October 6, 1972).)

Accordingly, an application to purchase a trade and manufacturing site claim must be properly filed in the land office by the party who initiated the claim. Mr. Heinz's application to purchase is unacceptable as he has no claim of record and he has gained no rights under the trade and manufacturing law and regulations to Mr. Riley's claim. Any actions concerning trade and manufacturing site A-067499 must be taken by Calvin Riley, and not by another party.

It therefore follows that Mr. Heinz's application for reinstatement must be, and is hereby, denied as he has no claim of record to be considered for reinstatement.

While it is unfortunate that Mr. Heinz is relying on the fact that he gained rights to Mr. Riley's trade and manufacturing claim by virtue of a quitclaim deed executed by Mr. Riley, it in no way alleviates the Department from adhering to the law and regulations issued thereunder which govern trade and manufacturing site claims. A quitclaim deed may only convey such

rights or interest a party may have. As settlement rights are not transferable, they may not be conveyed. Mr. Riley's quitclaim deed cannot convey title to real estate in which he has no title to convey.

Accordingly, this Department has no choice but to reject the application to purchase and application for reinstatement of trade and manufacturing site claim filed by Mr. Heinz.

Heinz appealed from the adverse decision. Following this appeal, the State Office received an application for reinstatement and purchase of the subject site filed by Riley on behalf of the association of Heinz and Riley. Attached were business records indicating that Heinz and Riley were in business together in 1966 and 1967, and also showing that their joint bank account was closed as of April 3, 1968. Riley reiterated the allegations made in his April 23, 1973, request for reinstatement, and again asked the Department to apply principles of equitable adjudication to his case.

By order dated December 16, 1974, the Board consented to appellant's request for an extension of time in which to file a statement of reasons in support of appeal. We also determined that inasmuch as the separate applications of Heinz and Riley each stem from the identical trade and manufacturing site location, the applications and the appeal would be consolidated for decision purposes.

In his statement of reasons, appellant offers three alternative bases for relief: (1) Calvin Riley's application for reinstatement and purchase should be approved; (2) appellant's application for reinstatement and purchase filed on behalf of the association of Heinz and Riley should be approved; or (3) the appellant obtained Riley's rights to the site by quitclaim deed and thus gained Riley's rights to the land and has the right to obtain patent to the land in his individual capacity. Appellant states that both he and Riley will be satisfied if the Department grants title to the T&M site to either one of them individually or to both of them as an association. Appellant also requests a hearing on the merits.

The statement of reasons offers the following circumstances to describe why the T&M site had not been patented during the five-year statutory period:

Not only were Mr. Heinz and Mr. Riley confused as to the legal status of the T&M site during [the five-year statutory period], but so were the officials of

the Alaska State Office of the Bureau of Land Management in Anchorage. At one time Mr. Heinz and Mr. Riley were told that PLO 4582 extinguished Mr. Riley's notice of location; at another time they were told that PLO 4582 prevented BLM from accepting Mr. Riley's Application to Purchase; yet again they were told that Mr. Riley's April 2, 1968 conveyance of his interest in the T&M site to Mr. Heinz by quitclaim deed was a valid conveyance so as to put Mr. Heinz in Mr. Riley's shoes before the BLM; and Mr. Heinz was told that the statement of 12 [sic] witnesses of May 19, 1970, which stated that Mr. Riley and Mr. Heinz started business as partners on the T&M site, was solid evidence so as to prove to BLM that Mr. Riley had filed on the T&M site as an Association of Citizens on behalf of himself and Mr. Heinz. Thus, the uncertain legal status of the public lands in Alaska greatly hindered Mr. Heinz and Mr. Riley in perfecting their interest in the T&M site.

The Act of May 14, 1898, as amended, 43 U.S.C. § 687a et seq. (1970), states, in applicable part, the following:

Any citizen \* \* \* or any association of such citizens \* \* \* in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only \* \* \* upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or productive industry \* \* \*.

\* \* \* \* \*

All qualified persons, [or] associations \* \* \* shall file a notice describing such claim \* \* \* within ninety days from the date of the initiation of the claim \* \* \*. Unless such notice is filed in the proper district land office within the time prescribed the claimant shall not be given credit for the occupancy maintained in the claim prior to the filing of (1) a notice of the claim in the proper district land office, or (2) an application to purchase, whichever is earlier. Application to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this section.

With respect to his first point on appeal, appellant argues that Riley should be deemed to have satisfied the requirements of

the Act. Appellant correctly points out that the State Office should have accepted Riley's application to purchase when he made tender directly after Public Land Order (PLO) No. 4582 went into effect. Appellant then alleges that Riley had done all acts necessary to perfect his claim at the time he tendered his application and that had the State Office complied with requirements of law and accepted the application, Riley would now hold patent to the T&M site.

The refusal of the Alaska State Office to accept Riley's tender of an application to purchase was erroneous, if, in fact, that office did refuse to accept it. James Milton Cann, 16 IBLA 374, 376-77 (1974). Accordingly, if we assume that Riley initially tendered his purchase application shortly after PLO 4582 became effective, but it was improperly refused by the BLM, his application would be deemed to have been filed as of the date of tender and may be considered on its merits. James Milton Cann, supra.

Appellant alleges that the purported action of the State Office in refusing to accept Riley's purchase application resulted from the fact that the land had been withdrawn from entry by PLO 4582. This order was proposed by the Department on December 14, 1968, issued on January 17, 1969, and published in the Federal Register on January 23, 1969. 34 FR 1025. The Board has repeatedly held that PLO 4582, as amended by PLO 4962, 35 FR 18874 (December 11, 1970), both of which were terminated by the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 43 U.S.C. § 1601 et seq. (Supp. III, 1973), did not preclude consideration on the merits of purchase applications filed for settlement claims initiated prior to the initial PLO 4582 withdrawal. Beverly J. Hayes, 8 IBLA 287 (1972); Alvin R. Aspelund, 7 IBLA 165 (1972); Richard Lee Farrens, 7 IBLA 133 (1972); Herbert W. Simms, 7 IBLA 51 (1972); Elizabeth Hickethier, 6 IBLA 306 (1972); C. Rick Houston, 5 IBLA 71 (1972); Juanita J. Anderson, 4 IBLA 170 (1971). We further noted that equitable adjudication could be invoked to permit consideration of settlement claim purchase applications where the proofs and applications were filed after the required statutory period, substantial compliance with the law had been alleged, and the claims were initiated prior to the land being withdrawn by PLO 4582.

[1] Accordingly, we may now reach the merits of Riley's application to purchase. The trade and manufacturing site law cited above clearly demonstrates Congress' intent that only those applicants (1) in possession and occupation of a site which (2) embraces "improvements of the claimant," used for business purposes, should be allowed to qualify for a trade and manufacturing site. Appellant has submitted a copy of a quitclaim deed wherein Riley conveyed his entire interest in, and the improvements upon, the subject T&M site.

The deed is dated April 2, 1968. This is a time long prior to Riley's alleged attempt to tender a purchase application following implementation of PLO 4582, which, as noted above, was issued on January 17, 1969. Furthermore, appellant has submitted the attestation of 14 persons indicating that the "association" of Heinz and Riley terminated following Riley's conveyance to Mrs. Patricia Heinz. The business records submitted with the purchase applications further demonstrate that as of April 1968, Heinz alone ran the business on the site. All the evidence in the record points to the conclusion that Heinz occupied and made claim to the subject site and improvements for his sole use following the 1968 conveyance. An applicant for a trade and manufacturing site who has sold his entire interest in the claim prior to submitting his purchase application is no longer a qualified applicant under the law. Any rights he may have earlier established terminated at the time he conveyed his entire interest in the claim. Paul M. Jovick, 19 IBLA 283 (1975). <sup>4/</sup> Accordingly, we conclude that Calvin L. Riley, Jr.'s, purchase application for the subject site must be rejected.

[2] At this point we may also dispose of appellant's third point on appeal, namely, that Heinz, as the purported vendee of Riley's interest, <sup>5/</sup> is qualified individually to receive patent for the subject site. The State Office properly held that Heinz, in his individual capacity as Riley's transferee of the site and improvements, could not have the benefit of Riley's original location rights. Heinz had to look to his own activities, and if he did not legally establish his own claim prior to withdrawal of the land, he could acquire no rights thereafter. Dale R. Lindsey, *supra*; Kennecott Copper Corp., *supra*. The subject site was not available for trade and manufacturing site appropriation when Heinz filed his purchase application in 1974. <sup>6/</sup> As Heinz could not avail

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<sup>4/</sup> We rely on Jovick for the principle that a complete divestiture by the original locator, with no retention of any right, title or interest in the T&M site, terminates the locator's interest in the claim.

<sup>5/</sup> We note that Riley's interest was conveyed to "Patricia M. Heinz." Appellant has not demonstrated how Patricia Heinz' interest insures to his benefit. In any case, assuming arguendo that appellant became the legal owner of the conveyed interest, our conclusion remains unaltered.

<sup>6/</sup> The status sheet in the case file indicates that the land is subject to the following conflicting claims: (1) AA-2779, Multiple Use classification; (2) State Selection AA-5448; (3) Native Claims AA-6666 and AA-6667, filed pursuant to the Alaska Native Claims Settlement Act of December 18, 1971; and (4) Township Classification, PLO 5184, 37 FR 5587 (1972).

himself of his vendor's notice of location, and, not having filed one in his individual capacity prior to withdrawal of the land, he had not established any right to purchase the land. Kennecott Copper Corp., supra. Accordingly, we affirm the decision below with respect to rejection of appellant's purchase application based upon his status as vendee of Riley's interest in the subject site.

We now come to the final problem in this case, namely, the request that patent should issue based upon the original location notice having been allegedly filed on behalf of the association of Heinz and Riley. In his statement of reasons, appellant alleges that he and Riley were business partners for almost a year prior to Riley's filing for the T&M site, and that they both thought that due to appellant's one-half ownership of the business he would automatically own one-half of the T&M site. Appellant maintains that the omission on the part of Riley in not including Heinz' name on the notice of location was the result of ignorance or mistake, and thus, principles of equitable adjudication should be applied.

We do not find appellant's allegations regarding the intended "association" status of the original location notice persuasive. Appellant points out that he and Riley were in business together for almost a year prior to the notice filing by Riley, and both parties have submitted business records all of which, prior to April 1968, are in the names of Riley and Heinz. There was no assumption, for example, that due to Heinz' one-half interest in the business he would automatically retain a one-half interest in a bank account; both parties' names were included. When the parties intended to jointly own an asset, they knew how to properly go about it.

Two other facts belie the allegations that an association was originally intended with respect to location of the subject T&M site. First of all, the Act of May 14, 1898, declares that an applicant may purchase one claim only for purposes of trade, manufacture or other productive industry. Appellant filed his own separate notice of location for T&M site A-067517 four days after Riley filed his notice. If we assume that appellant dealt with the government in good faith, we must also assume that he intended to observe legal requirements. Clark County School District, 18 IBLA 289, 303, 82 I.D. \_\_\_\_ (1975). The law requires that an applicant for a T&M site must show that he has not theretofore applied for land as a T&M site. 43 CFR 2562.2; Lloyd Schade, 19 IBLA 251, 252 (1975); Edwin William Seiler, 16 IBLA 352 (1974). 7/ If appellant's

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7/ Petition for Reconsideration pending before the Board.

"interest by association" presumption is to be given credibility, then one must also assume that his subsequent filing for an additional T&M site was improper as it was done at a time when he believed he had previously acquired an interest in a T&M site.

Finally we note that the quitclaim deed issued by Riley transferred the entire interest in the subject site. Appellant again asserts that "mistake" was the basis of this failure to indicate in the deed that appellant already owned a one-half interest in the land. We also note again that this one-half interest error was compounded by an additional "mistake," i.e., a conveyance to Patricia Heinz instead of to appellant who in 1968 still had an existing, viable T&M site location on a claim near Riley's site.

We do find a mistake in this case, but not of the type averred to by appellant. Riley apparently had qualified to purchase the site, and he could have done so prior to conveying his interest in 1968. Following this conveyance and before the withdrawal created by PLO 4582, there being no other impediment, a successor to Riley's interest could have qualified himself to purchase the land in his own name. The withdrawal, however, cut off the right of anyone but Riley to establish a trade and manufacturing site on the land. Riley had a nontransferable interest in the T&M site. When he chose to transfer his entire interest in the site without having received a patent or having taken all steps necessary to get one, there was no legal way he could transfer the benefits of his endeavors to appellant. Paul M. Jovick, supra; Dale R. Lindsey, supra; Kennecott Copper Corp., supra.

Though the evidence suggests otherwise, even if we assume that the original location was, in fact, filed on behalf of the association of Heinz and Riley, our final determination is not changed. Appellant admits that Riley's notice of location did not comply with 43 CFR 2562.2, which provides in part that:

If the application is made for an association of citizens \* \* \* the qualifications of each member of the organization must be shown. (Emphasis added.)

Appellant urges that Riley's failure to comply with the "technical" requirements of 43 CFR 2562.2 should not operate to deprive appellant of his interest in the T&M site. We cannot agree. This regulatory requirement is clearly mandatory and necessary in order to assure that only qualified applicants gain rights to the land. Edwin William Seiler, supra. To hold otherwise in this instance would invite abuse of the public land laws. "Silent" associates could locate other claims elsewhere, and if the venture proved

unprofitable, could later abandon the second claim and retroactively assert an interest in the purported association. Similarly, vendees of a site who could not establish their own rights individually or based upon their vendor's original location, could come in and declare that they were, in fact, simply acquiring their "associate's" interest in the original location.

[3] Rights to public land can only be gained by compliance with the governing public land laws. Kennecott Copper Corp., *supra*. Assuming appellant's allegations to be true, the decision appealed from would rest upon an issue of law, namely, the legal effect to be given to occupancy initiated and continued under a defective notice of location. Such occupancy does not lead to qualification to purchase the site. Edwin William Seiler, *supra*. Accordingly, we affirm the rejection of appellant's application to purchase the subject site on behalf of the purported association of Heinz and Riley. 8/

Furthermore, we reject appellant's requests that equitable adjudication be applied in this case. 43 CFR 1871.1-1. At the time of filing his application, and thereafter, Riley neither possessed, occupied, nor owned the T&M site, and the business and improvements thereon. As for Heinz, his activities in this matter do not entitle him to equitable relief. Accordingly, the principles of equitable adjudication are not applicable in this case. United States v. Wells, 2 IBLA 247, 251, 78 I.D. 163, 165 (1971); United States v. Booth, 76 I.D. 73, 87 (1969); United States v. Lance, 73 I.D. 218, 227 (1966), complaint dismissed, Lance v. Udall, Civil No. 1864 (D. Nev., Jan. 23, 1968); United States v. Johnson, A-30853 (March 7, 1968).

One final matter deserves consideration. Appellant has requested a hearing on the merits of this case, relying on Don C. Jonz, 5 IBLA 204 (1972). In Jonz, the Board held that where a homestead claimant had made a valid entry and had done all that was required under the law to perfect his claim, he had an equitable title which could not be canceled without a hearing. The hearing process had to be used where defects found to support a cancellation did not appear on the face of the record. However, the converse is also true. Appellant's application may be rejected for defects appearing on the face of the record without giving him an opportunity for a hearing. Assuming all of appellant's allegations are true regarding the defective notice, he has not alleged facts which, if proved, would entitle him to the relief sought.

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8/ We also reject appellant's suggestions that he has gained rights to the subject site based upon erroneous advice received by employees of the BLM. See Grady C. Price, Jr., 17 IBLA 98 (1974).

Edwin William Seiler, *supra*; see also Herschel E. Crutchfield, A-30876 (September 30, 1968). Therefore, we find that appellant has raised no issue of fact sufficient for us to order a hearing on the matter and his request is denied. 43 CFR 4.415.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed as modified by the rejection of Calvin L. Riley, Jr.'s, purchase application for the subject site.

Martin Ritvo  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joan B. Thompson  
Administrative Judge

